

## Affordable Assisted Living in Other States

### MAINE

The Maine State Housing Authority, the Bureau of Elder and Adult Services, the Department of Human Services, and others have partnered to develop assisted living facilities in the state. A variety of financing mechanisms are used to develop the real estate, including Low Income Housing Tax Credits. Services are paid for with private pay, federal funds, and a state health care plan called MaineCare that is funded with Medicaid dollars.

Maine housing officials try to combine the development of affordable Assisted Living with community revitalization efforts by renovating community landmarks and other existing buildings. For example, they have transformed an old department store, high school, and city hall into Assisted Living facilities.

One of the features that makes Maine's affordable assisted living unique is that it is specifically constructed to comply with tax credit rules. For example, the program's authors structured it in a way that would clearly distinguish Assisted Living homes from nursing homes, a key to complying with LIHTC requirements. The state's licensing regulations are the vehicle through which Maine housing officials ensure that Assisted Living deals meet LIHTC rules. These licensing regulations are described below.

### Maine's Licensing Regulations

#### **Definitions**

The definitions used in Maine's licensing regulations for assisted living facilities are structured to support the separation of services from housing, as necessary to qualify for LIHTC. For example, housing services are defined in a way to make them distinct from medical services, as described below.

- "Assisted Housing" is defined as the provision of housing, assistance with Activities of Daily Living (eating, bathing, dressing, etc.) and assistance with Instrumental Activities of Daily Living (meal preparation, taking medication, routine housework, etc.), personal supervision, protection from environmental hazards, meals, diet care, care management, and diversional activities. This definition, while allowing for the personal care services necessary to maintain health, does not allow for any medical care.
- "Assisted Living Services" is defined as the provision of assisted housing services plus medication administration or medications plus nursing services. (Assistance with medications means assisting residents to receive the proper dosages prescribed by their physicians. It does not mean actually prescribing medicines.) In other words, all Assisted Living programs must provide assisted housing plus medication administration, but not all are required to provide nursing services. This is a distinction that becomes important in Maine's multi-level licensing system (see below).
- An "Assisted Living Program" is a "program of assisted living services provided to residents in private apartments."

### Provision of Non-Housing Services

In order to comply with LIHTC requirements, a facility must be deemed a "residence", not a "health care facility". One of the tests that the courts have used to determine which term best describes a facility is whether "continual or frequent" nursing, medical or psychiatric care is provided. If continual or frequent care is provided, a facility is not eligible for tax credits. To address these LIHTC rules as they pertain to the provision of services, Maine housing officials used the following strategies:

- **Multi-Level Licensing.** In Maine, Assisted Living facilities are required to be licensed. A multi-level licensing structure allows licensed facilities to qualify for LIHTC, as described below:

- **Level I Licensing.** Level I facilities are defined as those that 1) provide assisted housing and 2) assist residents with taking medication. Receiving a Level 1 license enables a facility to qualify for LIHTC financing, because no medical services are provided.
- **Level II licensing.** Level II facilities are defined as those that provide 1) assisted housing, 2) medication administration, and 3) nursing services of some type. Facilities determine the level of nursing services that will be provided.

### **Meeting Rent Limits**

The provision of services in Assisted Living facilities complicates the question of whether or not a facility meets the LIHTC rent limits. It raises the question of whether the cost of non-housing services should be included when calculating rent for the purposes of determining whether a unit is property rent restricted, since including these costs in rents would certainly make them too high to qualify. The LIHTC rules state that payments for non-housing services do not have to be considered to be rent as long as the costs to low-income tenants for these services are optional. Maine has addressed this concern by taking the following actions:

- All services are optional to residents. While residents are required to be “functionally eligible” (need assistance) to live in an Assisted Living facility, the receipt of the services provided *by the facility* are optional. In other words, residents may opt to receive services from a provider outside of the facility or from a spouse or family member if they choose.
- For services that are provided at the facility, facility owners contract with separate providers, who then offer the services to residents.

## **MASSACHUSETTS**

Massachusetts has a program called “Elder Choice”, which has been in existence for approximately 10 years. Via this program, the state has developed about 12 affordable senior assisted living projects. The Massachusetts Housing Authority often uses a “80/20” structure, where 20% of the units are affordable, and 80% are market rate.

**Funding the Real Estate.** A variety of sources have been used to fund the construction of these facilities, including LIHTC, tax-exempt bonding, historical bonds, and HOME funds. They have also used a variety of other means to make Assisted Living affordable, including using various means to acquire land at lower than market rate.

As discussed above, a problem faced by Massachusetts (and others) in using LIHTC to finance affordable Assisted Living is that Tax Credit regulations require any costs that are not optional to residents to be included in rents. However, to include the cost of assistance with Activities of Daily Living (ADLs) and other non-housing services in monthly rents likely make rent levels exceed the low-income rent restrictions of the Tax Credit program. To address this problem, Massachusetts, like Maine, requires residents to be in need of assistance to live in an Assisted Living facilities, but makes the receipt of the services provided by the facility optional. In other words, residents may opt to receive services from a provider outside of the facility if they choose.

**Partners.** The Office of Elder Affairs and others.

**Licensing.** In Massachusetts, facilities must be licensed in order to call themselves “Assisted Living”.

**Funding Rental Assistance.** Their market rate Assisted Living units rent for approximately \$3,000 to \$4,000 per month, and a joint federal-state program helps to supplement rents for qualified residents. This program, Supplemental Security Income (SSIG), is a separate program from Social Security and is used together with the Group Adult Foster Care (GAFC) program described below to fund the operations of Assisted Living facilities. As of January 1, 2005, the maximum SSIG benefit amount was set at \$1,053. In order for an individual to access the SSIG benefit s/he must live in certified assisted living, be clinically eligible for and participate in Group Adult Foster Care (GAFC), have monthly gross income less than \$1,053; and have assets of less than \$2,000 (\$3,000 for a couple).

**Funding for Services.** Massachusetts has a Medicaid program called Group Adult Foster Care (GAFC) that reimburses providers for giving administrative and clinical oversight and daily assistance with personal care services to eligible individuals at risk of institutionalization. In order to qualify, participants in GAFC must meet certain financial criteria, have physician authorization of a medical diagnosis that deems GAFC an appropriate program for their needs, require daily assistance with at least one Activity of Daily Living (ADL), which is related to a medical diagnosis; and receive clinical approval from an Aging Services Access Point (ASAP). Approximately \$1,150 per participant per month is reimbursed to the provider (as of April 2003) for services, while the resident remains responsible for the rent.

**Obstacles.** A representative from the Mass. Housing Authority said that underwriting of these deals was “enormously complex” and that they have run into many problems that have caused them to become less interested in underwriting these deals in the future. He stated that these deals can go bad very quickly, much faster than a normal development, primarily because the operating costs are very high. While most of their affordable Assisted Living deals have rented up as expected, a couple have not and, due to high operating costs, were in the red very quickly. (He stated that lease-up deficit reserves can be as high as \$1 million.) These deals are very sensitive to “changes in the market”, and that sometimes don’t know why buildings do not lease up as expected.

**Miscellaneous.** The representative commented that it “took years” to put in place the necessary legislative and regulatory changes necessary to allow for affordable housing with services.

### **THE “COMING HOME” PROGRAM**

Coming Home is a 13-year, \$14.3-million national program created in 1992 by The Robert Wood Johnson Foundation (RWJF) and NCB Development Corporation (NCBDC) to develop affordable models of assisted living with a focus on smaller and rural communities and low-income seniors. As of June 2004, Coming Home resulted in the completion of 31 affordable assisted-living facilities with 1,029 affordable units in 13 states and 55 projects in development with 2,340 units. Many of the Coming Home projects will continue developing demonstration projects through 2005, when a final evaluation of the entire program will be produced.

One of the goals of the Coming Home program is to help states reform and integrate subsidies (Medicaid and housing subsidies) and oversight programs to support quality assisted living. The grants were up to \$300,000 for 3 years and could be used for the following:

- Create/improve the regulatory environment, Medicaid, and housing finance policies to make Assisted Living widely available
- Coordinate state policy and programs to facilitate the development and operation of Assisted Living facilities
- Help actors work together
- Provide technical assistance

### **Samples of Coming Home Facilities**

#### **Arkansas**

Development Name: Gardens at Osage Terrace

The Facility: 45-units (34 studio, 11 1-bedroom)

Affordability: As low as Federal SSI payment amount (\$564 per month) or as high as 60% of AMI

Sponsor: Community Development Corporation

Financing: LIHTC (57%), private mortgage, FHLB Affordable Housing Program (AHP) grant, HOME loan, grant from the Community Care Foundation.

Funding of Supportive Services: Private Pay, Medicaid

Provision of Supportive Services: Mercy Health Systems

Other Actors: Dept. Human Services, Division of Aging and Adult Services, Office of Long-Term Care, Arkansas Development Finance Authority.

**Washington**

Name: Quail Hollow Assisted Living

The Facility: 16-units of Assisted Living

Affordability: Half of the units are designated for Medicaid waivers

Sponsor: North East Washington Health Programs (nonprofit healthcare organization)

Financing: The "majority" of financing is from the USDA's Rural Housing Community Facilities Loan Program. Other sources: Local health organizations, City of Chewelah.

Provision of Supportive Services: The sponsor.

Other Actors: Wash. Dept. of Social and Health Services' Aging and Disability Services Administration, Wash. State Housing Finance Commission, Rural Community Assistance Corp.

Miscellaneous: Achieved economies of scale through sharing administrative and clinical staff with other of the

sponsor's programs and through bulk purchasing.

**Florida**

The Facility: Helen Piloneo Assisted Living

The Building: Demolished an aging apartment building and built new building

Affordability: 110 units, 100%affordable

Sponsor: Pinellas County Housing Authority

Financing: Pinellas County Housing Authority issued bonds

Funding of Supportive Services: Medicaid 19195(c) waivers, Assisted Care Services (a state plan for adults

with disabilities who receive SSI), Optional State Supplementation, and HUD Urban Development Public Housing Operating Subsidies.

Provision of Supportive Services: MIA Management Services.

Other Actors: Florida. Dept. of Elder Affairs, Florida Housing Finance Corp., Agency for Healthcare Admin.